

EXHIBIT 16

Deposition of Tory Murphy

Pages: 21, 33, 34, 35, 39, 40, 41

224369899v1

Dated: March 25, 2021

1 probationary period.

2 Q Okay. So you were in that
3 probationary period at that point; is that right?

4 A Yes, sir.

5 Q What was your specific duty on August
6 25th? What would you call that if you -- strike
7 that.

8 I assume that if you broke other
9 officers, that meant that you spent your day
10 going around to different blocks; am I assuming
11 correctly?

12 A That is correct, sir.

13 Q All right. What is that
14 responsibility called?

15 A It's called a special assignment
16 officer. Usually, the officers will use the term
17 SA.

18 Q And you were an SA -- so you were
19 obviously an SA officer that day, August 25,
20 2018; is that correct?

21 A Correct, sir.

22 Q Were you typically assigned as an SA
23 officer at that time period?

24 A It varied from day to day, so
25 depending upon the need of the institution.

1 getting paid \$3 an hour; is that correct?

2 A That is what I have heard from the
3 other inmates, that is correct, sir.

4 Q Okay. Let me ask you some more
5 specific questions about Mr. Freitag. We know
6 from the video that we watched that you had, at
7 least on one occasion, looked into his cell on
8 the morning of October 25th; is that correct?

9 A Yes, sir, at least one.

10 Q Before August 25, 2018, do you recall
11 any encounters with Mr. Freitag?

12 A Never, sir.

13 Q All right. In other words, didn't
14 see him on the housing area, didn't see him
15 anywhere in the facility; is that correct?

16 A Never, to my knowledge.

17 Q Had you heard anything about his case
18 before?

19 A No, sir.

20 Q I don't know whether you were on, did
21 you hear me describe to Deputy Warden Mitchell
22 the circumstances of his arrest, driving his
23 truck through his ex-wife's house?

24 A Yes, sir, I did hear that from you.

25 Q Do you remember reading anything in

1 the news or hearing anything about a sensational
2 case like that?

3 A Prior to that day, I did not.

4 Q That was my question. You knew -- it
5 wasn't as if, when you heard the name Freitag,
6 you said oh, that was a case I remember? I knew
7 about that. Nothing like that; is that correct?

8 A No, sir, I did not have any
9 knowledge.

10 Q All right. So can I assume then that
11 you had no knowledge of Mr. Freitag having been
12 on any kind of watch before the morning of August
13 25th; is that correct?

14 A I had no knowledge.

15 Q Okay. Is it -- based on everything
16 we have discussed, it sounds like the first time
17 Mr. Freitag ever came to your attention was when
18 you looked into his cell that morning of August
19 25th; is that correct?

20 A I guess I would define attention --
21 or ask you to define --

22 Q Yeah. Let me do something different.
23 Actually, let's do this: I want to pull up the
24 video that I showed Deputy Warden Mitchell. Bear
25 with me for a moment while I locate that.

1 A No problem, sir.

2 Q Do you see on the screen an image of
3 the B module?

4 A I do, sir.

5 Q This video, for counsel's benefit, is
6 Bates stamped 466, and I'm moving seven and a
7 half minutes in. It starts at 10:13, so we are
8 at 10:21 a.m.

9 And do you see on the right side of
10 the screen -- first of all, where my cursor is,
11 is that cell three?

12 A It does appear to be, yes, sir.

13 Q And we see a person in a correctional
14 officer uniform. Does that look like it's you,
15 sir?

16 A Yes, sir, I do believe it is.

17 Q Yeah. I realize it may be tough to
18 make it out, but we can watch from here and I
19 will play it on five times speed.

20 Would you agree that what we have
21 looked at there is you making your observation in
22 Mr. Freitag's cell as part of the level three
23 watch?

24 A I was observing all of the inmates as
25 well as Mr. Freitag.

1 also generally, the two officers assigned to that
2 block generally take precedent over the
3 supervision of the inmate monitors as I generally
4 don't know who those inmates are.

5 Q Got it. So when you come onto the
6 block or the module as a special assignment
7 officer, you are only there for a matter of
8 minutes; right?

9 A It could be anywhere -- it depends
10 upon the circumstance. We do receive breaks as
11 well as lunches, so it could be anywhere from ten
12 minutes to 30 minutes for one individual.

13 Q Do you remember how long you were on
14 the B module that day?

15 A I don't recall the time period, no,
16 sir.

17 Q And I'm going to try to establish
18 that by video, if you give me a minute? So we
19 know -- by the way, so we just looked at seven
20 minutes and 20 seconds in you -- I've scrolled
21 back now on that -- I don't have the video in
22 front of you. Bear with me. Do you have the
23 video in front of you now, sir?

24 A I do, sir.

25 Q All right. So at seven minutes and

1 30 seconds in, we know that you are in front of
2 Mr. Freitag's cell, so from 10:13, when this
3 video starts, you are there at 10:20, and I'm
4 going to scroll ahead to 27 minutes.

5 I want you to watch with me, towards
6 the background of the screen where my cursor is,
7 is that the entrance and exit to the B module?

8 A Yes, that is correct.

9 Q And is that you who appears to be by
10 the door there?

11 A That does appear to be me, I believe
12 it is, sir.

13 Q All right. So I'm going to play from
14 there. And you see the person who we are looking
15 at, and we believe is you at 27:06, is walking
16 out.

17 Would you also agree that there
18 appears to be two other officers at the podium
19 there?

20 A That is correct, sir.

21 Q All right. So 27 minutes in, so
22 10:13, we are talking about 10:40 a.m. is when
23 you leave the unit, which would mean that you
24 were there for 20 or 25 minutes, give or take,
25 does that sound about right, sir?

1 A That does sound correct.

2 Q All right. During that time period,
3 we already looked at you conducting one watch on
4 the unit. Do you know whether you would have
5 conducted another?

6 A I do believe I saw myself on the
7 video, but the majority of the time, I was
8 upstairs conducting tours constantly.

9 Q Okay. When you say conducting tours
10 constantly, what does that mean?

11 A Walking around the upper tier of the
12 block, looking into every cell.

13 Q I see. So -- and when you say
14 constantly, do you mean for the entire time
15 period that you were on the block?

16 A Yes, in the entirety that I was
17 there, minus the time that I was downstairs
18 checking three cell, and minus the time that I
19 was speaking with the other two officers prior to
20 leaving.

21 Q Do you remember what you were talking
22 to those other officers about?

23 A No idea.

24 Q All right. When officers report back
25 from a break, would it be typical that you would